

B. THE HOUSE JOURNAL

§ 8. In General; Purpose and Use

The Constitution requires the House of Representatives to keep a Journal of its proceedings, and from time to time publish it excepting such parts as may in its judgment require secrecy.⁽¹⁾ Accordingly, it is the Journal of the House and not the *Congressional Record* that is the official record of the proceedings of the House,⁽²⁾ and as such it is appropriately afforded judicial notice by both federal and state courts.⁽³⁾

The object of the constitutional clause exacting the keeping of the Journal is to ensure publicity to the proceedings of the House and a correspondent responsibility of the Members to their respective constituents.⁽⁴⁾ And, in consonance with such purpose, Jefferson's Manual, although providing that the Clerk is not to let the Journal be taken out of his custody,⁽⁵⁾ also emphasizes that as an official

record the Journal is open to inspection by every Member and that anyone may take and publish votes therefrom.⁽⁶⁾

The Clerk is required to print and distribute the Journal at the close of each session to the Members and others designated by the House rules.⁽⁷⁾ Further, various statutes provide for the distribution of the Journal to the libraries and document rooms of both Houses of Congress, and to the Secretary of the Senate, the Clerk of the House, and several other governmental officials, agencies, and departments.⁽⁸⁾

Effect of Variance Between Journal and Congressional Record

§ 8.1 The Senate Journal is the official record of Senate pro-

1. U.S. Const. art. I, § 5, by which an identical requirement is imposed upon the Senate.
2. 4 Hinds' Precedents § 2727.
3. 31 CJS Evidence § 43.
4. 2 Story, *Commentaries on the Constitution*, §§ 837-839.
5. *House Rules and Manual* § 352 (1973).

6. *House Rules and Manual* § 582 (1973).
7. Rule III clause 3, *House Rules and Manual* § 641 (1973) (which also requires that the Clerk send a copy of the Journal to the Executive and to each branch of the legislature of each state).
8. See, for example, 2 USC §§ 145, 146; 44 USC §§ 713, 1714, 1718.

ceedings, and where there is a variance between a Journal and a Record entry, the Journal is controlling.

On Jan. 8, 11 165,⁽⁹⁾ in response to a parliamentary inquiry of a Senator who asked whether the record of the Journal Clerk or the record of an official reporter of debates took precedence in the event that there was any variance between them, the President pro tempore⁽¹⁰⁾ said that the Journal is mentioned in the Constitution, and all the precedents support the Journal as the proper record.

§ 9. The Journal as Evidence

In keeping with the Journal's status as the official record of the House,⁽¹¹⁾ it is provided by statute⁽¹²⁾ that extracts therefrom certified by the Clerk⁽¹³⁾ are to be received in evidence with the

same effect as the originals would have. However, it has been held that with respect to matters not required by the Constitution to be entered on the Journal, such provision is not a statutory declaration that the Journal is the highest evidence of the facts stated in it or complete evidence of all that occurs in the progress of business in the House.⁽¹⁴⁾

Although the Constitution requires the objections of the President to a bill returned by him to be entered upon the Journal,⁽¹⁵⁾ the failure of the Journal to show such objections as of a certain time is not conclusive in determining whether the bill was in fact returned within the period allowed by the Constitution,⁽¹⁶⁾ particularly since the President has no control over the entries in the Journal.⁽¹⁷⁾

9. 111 CONG. REC. 452, 89th Cong. 1st Sess.

10. Carl Hayden (Ariz.).

11. See § 8, *supra*.

12. 28 USC § 1736.

13. 2 USC § 114 authorizes the Clerk to charge a nominal fee for certified transcripts from the Journal except when required by an officer of the United States in a matter relating to the duties of his office.

14. *Field v Clark*, 143 U.S. 649 (1892), construing former Revised Statutes § 895, the provisions of which respecting the admissibility and weight to be afforded certified copies of the Journal were essentially the same as those of 28 USC § 1736.

Collateral references: As to the extent to which resort may be made to legislative journals as an aid in the construction of constitutions or statutes generally, see 70 ALR 5. As to judicial review of parliamentary proceedings generally, see 59 Am Jur 2d *Parliamentary Law* § 15 (1971).

15. See § 10, *infra*.

16. U.S. Const. art I, § 7.

17. *Prevost v Morganthau*, 106 F2d 330 (70 App. D.C. 306, 1939).